



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

PIEDMONT REGIONAL OFFICE

4949-A Cox Road
Glen Allen, Virginia 23060
(804) 527-5020
Fax (804) 527-5106
www.deq.state.va.us

Robert G. Burnley
Director

Gerard Seeley, Jr.
Piedmont Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO MR. ORLANDUS BRANCH

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and Mr. Orlandus Branch, for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "Mr. Branch" means Mr. Orlandus Branch, owner of property located off Route 640 in Dinwiddie County, near the Nottoway County line.

7. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
8. “Corps” means U.S. Army Corp of Engineers.

SECTION C: Findings of Fact and Conclusions of Law

1. Mr. Branch owns a parcel of property in Dinwiddie County located off Route 640, approximately 4/10 miles south of the Nottoway County line (the property). The property contains wetlands and unnamed tributaries to Namozine Creek.
2. On March 14, 2003, DEQ received a report from the Corps of clearing, grubbing and filling of wetlands on the property without a permit.
3. On April 2, 2003, DEQ staff and the Corps performed a site inspection of the property. Staff observed unauthorized clearing, grubbing, excavating, filling, and impounding activities on the property. Some trees that were located in a forested wetland area bordering an unnamed tributary to Namozine Creek had been uprooted and knocked over. Two road crossings were observed on the property. The road crossings were located on unnamed tributaries to Namozine Creek. Staff observed an undersized culvert installed in the first road crossing. The construction of the second road crossing was unauthorized. It had failed due to improper construction and the installation of an undersized culvert. The undersized culvert created unauthorized impounding of state waters upstream, which contributed to part of the road crossing washing out with excessive sediment washing downstream into a forested wetland area.
4. The April 2, 2003 site visit with the Corps, determined that approximately 1.76 acres of jurisdictional wetlands and streams had been impacted by the unauthorized activities. Regulation 9 VAC 25-210-50.A and § 62.1-44.5 of the Code of Virginia state that no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, or otherwise alter the physical, chemical, or biological properties of surface waters, except as authorized pursuant to a Virginia Water Protection Permit.
5. On June 20, 2003, a Notice of Violation was issued to Mr. Branch for the alleged violations observed by DEQ staff on the April 2, 2003 site visit. Due to lack of response, the NOV was re-mailed on July 23, 2003 and again on August 18, 2003.
6. On February 13, 2004, DEQ met with Mr. Branch and his consultant at the property to review the site and discuss resolution of the alleged violations.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Mr. Branch and Mr. Branch agrees, to perform the actions described in

Appendix A of this Order. In addition, the Board orders Mr. Branch, and Mr. Branch voluntarily agrees, to pay a civil charge of **\$4,200** within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this order. Payment shall be by check, certified check, money order, or cashiers check payable to "Treasurer of Virginia" and sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Mr. Branch, for good cause shown by Mr. Branch, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the NOV issued on June 20, 2003 as listed above in Section C. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the property as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, Mr. Branch admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Mr. Branch consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Mr. Branch declares he has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and he waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Mr. Branch to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing

herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Mr. Branch shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Mr. Branch shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on his part. Mr. Branch shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

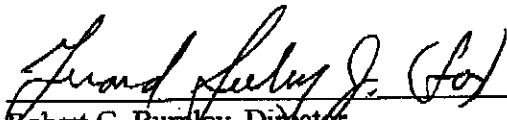
Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Mr. Branch. Notwithstanding the foregoing, Mr. Branch agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. Mr. Branch petitions the Director or his designee to terminate the Order after he has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. The Director or Board terminates the Order in his or its sole discretion upon 30 days notice to Mr. Branch.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Mr. Branch from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By his signature below, Mr. Branch voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of 12/3/04, 2004.


Robert G. Burnley, Director
Department of Environmental Quality

Mr. Branch voluntarily agrees to the issuance of this Order.

By: 

Date: 10/7/04

Commonwealth of Virginia

City/County of Richmond

The foregoing document was signed and acknowledged before me this 7 day of October, 2004, by Orlando Branch, who is owner of this property.


Notary Public

My commission expires: March 31, 2006

RECEIVED

CA
OCT 28 2004

PRO

APPENDIX A

Mr. Branch shall:

1. By **October 1, 2004**, submit and implement an approvable corrective action plan and schedule to restore the impacted forested wetlands located at the first road crossing and to remove the unauthorized fill from the wetlands and state waters downstream and upstream from the second road crossing. Upon approval, the corrective action plan shall become a part of this Appendix A and be incorporated herein by reference.
2. Upon DEQ and Corps approval of the restoration of the site, submit a Joint Permit Application for the road crossing project if the second road crossing is to be re-constructed.
3. Pursuant to this Order, submit all documentation required by this Consent Special Order to:

Cynthia Akers
Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060